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Montenegro

Fourth Compliance Report

Written analysis on progress in respect of FATF key and core recommendations

4th round evaluation

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MONTENEGRO

Fourth compliance report

1. *Written analysis of progress made in respect of the FATF core and key Recommendations*

1.1 Introduction

1. Following adoption of its 4th round mutual evaluation report (“**MER**”) at MONEYVAL’s 47th Plenary in April 2015, Montenegro was placed under the enhanced follow-up procedure pursuant to Rule 13 of the revised Rules of Procedure, and Step 1 of the Compliance Enhancing Procedures (“**CEPs**”) applied. Since then, three compliance reports have been adopted.
2. The first compliance report was adopted at MONEYVAL’s 50th plenary in April 2016. This included an analysis by the Secretariat of the measures taken by Montenegro to address the factors/deficiencies in relation to the core and key FATF Recommendations rated PC or NC in its 4th round MER. Montenegro was requested to provide a further compliance report to the 51st Plenary in September 2016 to demonstrate that timely action was being taken to address the remaining deficiencies in order to avoid the application of Step 2 of CEPs.

The second compliance report was adopted at MONEYVAL’s 51st plenary in September 2016. This included an analysis by the Secretariat of progress since the adoption of the first compliance report. It was agreed that positive action was being taken to change legislation and implement procedures and, as a result, premature to apply Step 2 of CEPs. Accordingly, the Plenary agreed that progress would be considered again in December 2016 at the 52nd Plenary, by which time it was thought that: (a) the requirements of R.6 (which replaces SR.III) would have been implemented (or would be very close to implementation); and (b) the political commitment and revised timetable requested for other necessary legislative amendments¹ would have been provided.

3. At the December Plenary, MONEYVAL welcomed the adoption by the Government of Montenegro of an Action Plan on the Implementation of UNSCR 1373 (2001) since the second compliance report had been considered in September 2016. This Action Plan also deals with the application in Montenegro of UNSCR 1267 (1999). However, it was noted that the majority of implementation deadlines set in the Action Plan (some of which related to legislative amendments) were for the third quarter of 2017 which meant that there would be a further delay in the rectification of severe deficiencies related to Special Recommendation III. The Plenary also noted that the political commitment and revised timetable requested for other legislative amendments needed to address deficiencies highlighted in Montenegro’s 4th Round MER (in respect of core and key Recommendations 1, 3, 5, 13, 23, 26 and 40 and Special

¹ Amendments are needed to the Criminal Code, the Law Preventing Money Laundering and Terrorist Financing (“**LPMLTF**”), and a number of regulatory laws administered by the Central Bank of Montenegro, Insurance Supervisory Authority and Securities and Exchange Commission.

Recommendations I, II, IV and V) had not been provided. This raised significant concern. The Chair observed that deadlines set in April and September 2016 had not been met by the authorities, in part due to recent elections. However, it was important for the Plenary to take a consistent approach to the application of CEPs. In light of the foregoing, the Plenary decided to apply Step 2 of CEPs.

4. As a consequence of the application of Step 2 of CEPs, a high-level mission to Montenegro was arranged to meet relevant ministers and senior officials on 3-4 May 2017. The MONEYVAL delegation was composed of Mr Daniel Thelesklaf (Chair of MONEYVAL), Mr Jan Kleijssen (Director of Information Society and Action against Crime) and Mr Matthias Kloth (Executive Secretary to MONEYVAL). The delegation held meetings with the Minister of Foreign Affairs as well as senior officials (General Directors) from the Ministry of Justice and the Ministry of Finance. The delegation also met with representatives from the Montenegrin Parliament.
5. The purpose of this paper is to explain the action that has been taken by the Montenegrin authorities since adoption of the country's third compliance report in December 2016 at MONEYVAL's 52nd plenary. It should be read in conjunction with the progress report of 4 April 2017 submitted by Montenegro (an updated version of which was sent to the Plenary on 12 May 2017).

1.2 Progress made by Montenegro since the adoption of the third compliance report

Review of measures taken in relation to the core and key Recommendations

6. The core and key Recommendations related to legal issues rated PC/NC in the 4th round MER were R.1 (criminalisation of Money Laundering), R.3 (confiscation and provisional measures), SR.I (implementation of UN instruments), SR.II (criminalisation of terrorist financing), and SR.III (freezing and confiscating terrorist assets). R.40 (other forms of cooperation) and SR.V (international cooperation) also cover legal issues (as well as financial issues).
7. The core and key Recommendations related to financial issues rated PC in the 4th round MER were R.5 (customer due diligence) and R.23 (regulation, supervision and monitoring).
8. The core and key Recommendations related to law enforcement issues rated PC in the 4th round MER were R.13 (suspicious transaction reporting), R.26 (the FIU), and SR.IV (suspicious transaction reporting related to terrorism).

Recommendations 1 and 3

9. The draft law on amendments to the Criminal Code in order to address deficiencies highlighted in the MER has been prepared and is expected to be adopted shortly. The European Commission provided comments on the draft law which were received by the Montenegrin authorities on 27 April 2017. These comments have meanwhile been incorporated in the draft. The MONEYVAL delegation was informed during the high-level mission on 3-4 May 2017 by the Ministry of Justice that the amendments would have been adopted by the Government by the time of MONEYVAL's 53rd Plenary and sent to Parliament for adoption by 30 June 2017, which is also recalled on page 16 of the revised follow-up report. The delegation of Montenegro is invited to report orally about the latest state of affairs on the draft amendments. With regard to R.3, there

have been no developments since December 2016 as regards limitations/restrictions deriving from the Code of Criminal Procedure and the “Law on Seizure and Confiscation”.

Special Recommendation III (and I)

10. To address the shortcomings identified in the 4th round MER concerning the application of targeted financial sanctions, the authorities have previously reported that the “Law on International Restrictive Measures” (“**Law on IRM**”) came into force in 2015. The law may be used when an international organisation, such as the United Nations or the European Union, introduces a restrictive measure against a named individual, state or entity. The authorities have explained that, subject to the adoption of necessary amendments, the law might also be used to designate natural or legal persons on their own volition or at the request of another country.
11. A number of possible deficiencies in the “Law on IRM” were identified in the first compliance report’s analysis by the Secretariat. In particular, it is not clear that definitions of “property” and “assets” correspond with “funds” or “other assets” referred to in UNSCR 1267 (1999), and fines that may be applied to legal persons (e.g. banks) that fail to comply are not considered to be effective.
12. It was explained in the second compliance report that restrictive measures are given effect under the “Law on IRM” through a Government Decision that is published in the Official Gazette. Accordingly, the Government of Montenegro adopted a Decision at its session held on 11 July 2016 on the introduction of international restrictive measures established by UNSCR 1267 (1999) against members of the group known as ISIL and Al-Qaeda and with them related individuals, groups, subjects and entities. The second compliance report’s analysis by the Secretariat also highlighted a number of problems with that Decision, including that it does not address UNSCR 1988 (2011) (regarding the Taliban and those associated with the Taliban in constituting a threat to peace, stability and security of Afghanistan).
13. In order to implement revised R.6 (which replaces SR.III), and cover some of the deficiencies referred to above, the Government of Montenegro adopted an Action Plan in November 2016, which covers both UNSCR 1373 (2001) and UNSCR 1267 (1999). The Action Plan includes seven “goals”. These are to: (a) consider national legislation to ensure that the accompanying measures and mechanisms are implemented in accordance with UNSCRs and the FATF standards; (b) establish measures that ensure automatic freezing of assets under UNSCR 1267 (1999)²; (c) adopt effective, publicly available, procedures for authorised access to funds and other assets that have been frozen and marked as necessary for basic expenses etc.; (d) establish an inter-agency body for targeted financial sanctions; (e) introduce a special and effective system for monitoring compliance with the new regime; (f) ensure submission of suspicious transactions reports in cases of targeted financial sanctions; and (g) adopt and publish procedures for exchange of lists with reporting entities.

² Whilst there is no direct reference to measures to ensure the automatic freezing of funds as required under UNSCR 1373 (2001) or under procedures initiated by third countries, this is covered under goal (a).

14. In March 2017, the Ministry of Foreign Affairs and the Ministry of Finance established an inter-institutional Working Group charged with the preparation of the proposal of the “Law on Changes and Amendments to the Law on International Restrictive Measures”, which will “define the mechanisms for the implementation of measures in accordance with the resolutions of the UN Security Council and the FATF standards” (see page 118 of the revised compliance report), and also implement the Action Plan of November 2016. The working group also received some technical assistance on these issues from the Council of Europe expert which had assisted in setting up the Action Plan. Amendments to the “Law on the Basis of Intelligence and Security Sector” were adopted by the Government in March 2017 and have been forwarded to the Parliament.
15. The majority of deadlines set in this Action Plan were originally set for the third quarter of 2017. However, in light of the decision by MONEYVAL to apply Step 2 of CEPs and the resulting high-level mission, Montenegro has meanwhile adjusted the timetable considerably. The MONEYVAL delegation was informed during the high-level mission on 3-4 May 2017 by the Ministry of Foreign Affairs that that the “Law on Changes and Amendments to the Law on International Restrictive Measures” could already be adopted by the Government at the time of the Plenary, and that it should be in force by the end of June 2017. The Secretariat encourages Montenegro to orally update the Plenary about the most recent developments in this regard.
16. In addition to the Action Plan, the Government of Montenegro has charged the Ministry of Finance in November 2016 with making changes to the “Law Preventing Money Laundering and Terrorist Financing” to require the FIU to identify persons whose funds and other assets will be subject to freezing under the “Law on IRM” (designated persons). The decision says also that the Government of Montenegro will issue the national list of designated persons by the third quarter of 2017. However, it appears that no further progress has been made since December 2016.
17. The Law on the Amendments to the Law on the Basis of Intelligence and Security Sector of Montenegro has been adopted by the Parliament on the 27 April 2017 and meanwhile entered into force.

R.5, R. 13/SR.IV and R.23

18. Deficiencies identified with regard to these recommendations are said to be addressed by amendments to the “Law on the Prevention of Money Laundering and Terrorist Financing”. A revised version of that law has been sent in early May, in the framework of technical assistance, to a Council of Europe expert, who is expected to provide comments on the draft by 22 May 2017.

2. Conclusions

19. Montenegro has made some progress since the 52nd Plenary in December 2017. However, important deficiencies have not yet been addressed, as the majority of proposals are still pending in on-going legislative processes. In the view of the Secretariat, recent progress reported orally by

Montenegro at the present Plenary will be crucial for MONEYVAL to form a view on the present compliance report. The Plenary will in particular have to determine whether the high-level mission conducted on 3-4 May 2017 (Step 2 of CEPs) has had any positive effect and triggered any accelerated legislative action.

20. As a first but important demonstrative step, the Plenary should consider if: (i) Montenegro has made a broad high-level political commitment to implement all recommendations made in the 4th round MER (and not just those involving legislative changes); and (ii) it appears that those recommendations will be addressed within an appropriate timeline. Previous such commitments, which had been made by the former government which left office in November 2016, did not embrace all areas of that report and rather focused on selected issues.
21. In order to verify that the authorities are serious about rectifying the deficiencies as speedily as possible, the Plenary should monitor the status of amendments to the Criminal Code at the time of the discussion of the report (30 May 2017). Moreover, a clear timetable should be provided in time for the 53rd Plenary on the envisaged adoption and entry into force of other legislative proposals. These are notably amendments to the “Law on the Prevention of Money Laundering and Terrorist Financing”, the “Law on Changes and Amendments to the Law on International Restrictive Measures” and the “Law on Misdemeanours” which should be adopted by Parliament before the deadline of the submission for the next compliance report (i.e. early August) to be considered at MONEYVAL’s 54th Plenary (26-28 September 2017). While fully respecting the constitutional processes, Montenegro should to that effect consider using the existing accelerated legislative procedure, which the MONEYVAL delegation discussed with representatives from Parliament during the high-level mission, for the adoption of these laws.
22. Significant progress on other outstanding legislative and regulatory projects (including guidance) required by the FATF standards, as well as swift implementation of the newly adopted laws once they have entered into force, should also be regarded as an important element by the Plenary at the 54th Plenary.
23. In this context, it should be recalled that the above milestones (i.e. a broad high-level commitment, adoption by the Government of the amendments to the Criminal Code and clear legislative timetable, with the remaining points to be addressed by the 54th Plenary) were discussed by the MONEYVAL delegation with the Montenegrin authorities during the high-level mission on 3-4 May 2017. It was agreed amongst the MONEYVAL delegation that, in case Montenegro had already fallen behind these milestones by the end of May 2017, without good reason, the Secretariat would propose at that time to the Plenary to apply Step 3 of CEPs. This step would then involve a formal public statement to the effect that Montenegro insufficiently complied with the reference documents and which invites the members of the global AML/CFT network to take into account the risks posed by that country.

The MONEYVAL Secretariat

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